HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1385/01 (S/S)

(Old No. 14376/2000)

R.N. Singh.

vs

State of U.P. and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 10.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1385 (SS) OF 2001

(Old No. 14376/2000)

Sri R.N. Singh,
S/o late Balwant Singh,
R/o Village Khajuri,
Post-Harganpur,
P.S. Raipur, District-Binor,
Presently posted as Sanitory and Food Inspector,
Nagar Nigam, Dehradun,
Residing at 7, Gandhi Colony,
Rajpur Road, Dehradun. .....Petitioner.

Versus

1. State of U.P. through its Secretary, Urban Development Anu-4 Lucknow.
2. The Director Local Bodies, Government of Uttar Pradesh, Lucknow.
3. The Administrator Nagar Nigam Dehradun.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri V.K. Bisht, Sr. Advocate, assisted by Ms. Seema Sirohi, Advocate for the petitioner, Standing Counsel for the State of U.P. and Standing Counsel for the State of Uttaranchal.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 29th February, 2000 passed by the respondent no.1.

Briefly stated, according to the case of the petitioner, he was appointed as Sanitory and Food Inspector in the Municipal Board and at present he is posted in the Nagar Nigam Dehradun since June 1996 and he has claimed that he possessed an unblemished record during his 28 years of service.

On 29th January, 2000, the petitioner was suspended on the ground that on 11.12.1999 the petitioner was arrested on the spot and a case under Section 7/13 of the Prevention of Corruption Act is pending against him.

Against the aforesaid order, the petitioner has filed the present writ petition. Following order has been passed by the Hon'ble Court on 17.05.2000:-

"Learned counsel for the petitioner urged that the impugned order of suspension is bad as the same has been passed without application of mind. It is contended that for the suspension of a Government servant under Rule 49-A (1-A) of Civil Services (Classification, Control & Appeal) Rules, 1930 before passing the order of suspension, the authorities are required to apply mind and also to indicate reasons in the order that it is necessary to put the employee under suspension considering the nature of criminal charges. Reliance has been placed on a judgment of this Court reported in 1994(1) UPLBEC page 348 ***(Brijesh Bahadur Singh Versus State of U.P. and another).***

Despite time having been granted on two occasions, no counter affidavit has been filed indicating as to whether any preliminary enquiry was made before passing the impugned order of suspension, in this view of the matter, I am constrained to pass interim order.

It is, accordingly, ordered that the impugned order of suspension shall remain stayed until further orders of this Court.

On the request of learned Standing Counsel, he is allowed six weeks' further time to file counter affidavit. List the petition for admission thereafter."

Counsel for the petitioner has referred the judgment Brijesh Bahadur Singh Vs. State of Uttar Pradesh and

another [(1994) 1 UPLBEC 348], the said judgment is no more in existence in view of the Full Bench decision of this Court in Chandra Shekhar Saxena Vs. Director of Education (Basic), U.P. [1997 (1) 1 UPLBEC 165], where the Full Bench has directed in paragraph 17 as under:-

"17. The deemed suspension by an aordr of the appointing authority thus is applicable to the detentions both under clauses (a) and (b) which are nothing but one alternative under two different contingencies. Under sub-rule (2), the phrase "as the case may be" continued to be placed under suspension by an order of appointing authority deals with a different alternative after the release of the Government servant from the custody or detention where the deemed suspension under the first part of sub-rule (2) may be continued by an express order of the appointing authority. In sub-rule (2) the phrase "as the case may be" contemplates two alternatives; one deemed suspension by an order of the appointing authority and another alternative of continued suspension on release of the Government servant from; detention. There appears no ambiguity or confusion. What we have said above is corroborated from sub-rule (2) of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, which reads as under:-

"(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority---

(a) With effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours:

(b) With effect from the date of his conviction, if, in the even of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not

forthwith dismissed or removed or compulsorily retired consequent to such conviction."

27. We have considered all the cases cited by the learned counsel for parties. Howeve,r we do not find anything on which basis the view we have expressed above may be doubted or shaken. Our conclusions and answer to the questions referred to us are as under:-

(A) Sub-clause (a) of sub-rule (2) of Rule 49-A of the Civil Services (Classification, Control and Appeal), Rules, 1930, as applicable in Uttar Pradesh, is not violative of Articles 14 and 21 of the Constitution of India as held in case of Jagjit Singh v. Sate of U.P. reported in (1996) 1 UPLBEC 405 and the judgment is here by over-ruled.

(B) The legal fiction envisaged under sub-rule (2) (a) and (b) of Rule 49-A shall come into play and a deemed suspension by an order of the appointing authority shall come into existence if the Government sevant is detained in custody for more than forty-eight hours even in absence of any order in writing passed by the appointing authority.

(c) The deemed suspension provided under sub-rule (2) of Rule 49-A shall be confined to the period of detention in custody and not beyond that.

(D) The deemed suspension by an order of the appointing authority under the legal fiction provided in sub-rule (2) may be constituted after release by the appointing authority by passing an express order taking into account the guidelines provided in other sub-rule of Rule 49-A according to the facts and circumstances of the case.

(E) The deemed suspension under sub-rule (2) of Rule 49-A may be modified or revoked by the appointing authority on a representation made by the Government servant which shall be considered and decided taking into consideration the guidelines provided in sub-rules (1) and (1-A) of Rules 49-A."

However, in view of Clause (E), the authority concerned has power to revoke the same as mentioned above.

Further in ***Union of India Vs. Rajiv Kumar (2003) 6 SCC 516,*** the Apex Court has laid down that the suspension shall operate and the power of revocation has been confirmed under Clause (c). Relevant portions of the judgment are quoted below:-

"13.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

29. Another plea raised relates to a suspension for a very long period. It is submitted that the same renders the suspension invalid. The plea is clearly untenable. The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension."

In view of the judgment of the apex Court, the petitioner has submitted that the suspension order is prolonging since long and is still continuing and no charge sheet has yet been submitted. In such an eventuality, liberty is given to the petitioner to file an application for revocation of the suspension order and in case the same is filed the same shall

be disposed of within a period of within a period of six weeks form the date of presentation of the certified copy of this order. Since the stay order was granted to the following effect:-

"Learned counsel for the petitioner urged that the impugned order of suspension is bad as the same has been passed without application of mind. It is contended that for the suspension of a Government servant under Rule 49-A (1-A) of Civil Services (Classification, Control & Appeal) Rules, 1930 before passing the order of suspension, the authorities are required to apply mind and also to iondicate reasons in the order that it is necessary to put the employhee under suspension considering the nature of criminal charges. Reliance has been placed on a judgment of this Court reported in 1994(1) UPLBEC Page 348 (Brijesh Bahadur Singh Vs. State of U.P. and another).

Despite time having been granted on two occasions, no counter affidavit has been filed indicating as to whether any preliminary enquiry was made before passing the impugned order of suspension. In this view of the matter, I am constrained to pass interim order.

It is, accordingly, ordered that the impugned order of suspension shall remain stayed until further orders of this Court.

On the request of the learned Standing Counsel, he is allowed six weeks' further time to file counter affidavit. List the petition for admission thereafter. Sd/-S. Rafat Alam."

The order aforesaid shall continue for a period of six weeks only from the date of production of the certified copy of this order.

However, the authority concerned shall pass appropriate orders in accordance with law and shall not be prejudiced by the order dated 17.05.2000.

Subject to the aforesaid, I do not find any merit in the writ petition and the same is dismissed. No order as to costs.

(Rajesh Tandon, J.)

10.08.2006
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